IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8969 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

G.S.R.T. CORPORATION

Versus

SHARIFMIYA YAKUBMIYA

Appearance:

1. Special Civil Application No. 8969 of 1990

MR HC RAWAL for Petitioner No. 1

NOTICE UNSERVED for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 12/04/2002

ORAL JUDGEMENT

1. Heard Mr. Rawal Learned advocate appearing on behalf of the petitioner Corporation.

2. In the present petition, the petitioner has

challenged the award passed by the Labour Court, Rajkot In Reference (LCR) No. 1486/88 dated 10-8-1990 whereby the Labour Court has quashed and set aside the dismissal order dated 28-7-1987 and granted reinstatement with continuity of service without back wages for the interim period.

3. At the time of issuing Rule, this Court has not granted any stay against reinstatement. Learned advocate Mr. Rawal appearing on behalf of the petitioner Corporation has submitted that the respondent workman had remained absent without prior permission for 19 days. In the past also, the respondent workman has committed misconducts about 11 times and out of 12 misconducts he had remained absent on 11 occasions and therefore the punishment was imposed by the petitioner Corporation. But the Labour Court has not appreciated default card of the respondent and merely denial of back wages for the interim period for such misconducts and having chequred past record, is not considered to be sufficient punishment and therefore some punishment is required to be imposed against the respondent workman.

4. I have considered the submissions made by Mr. Rawal learned advocate appearing on behalf of the petitioner Corporation. It is submitted by Mr. Rawal learned advocate appearing for the petitioner Corporation that the respondent workman remained absent for 19 days without prior permission and the Labour Court has exercised its power conferred under Section 11A of the Industrial Disputes Act, 1947 and granted reinstatement with continuity of service without back wages for the interim period. But the Labour Court thought it fit not to impose any punishment for the misconduct which has been proved and considering past record wherein in all 12 misconducts have been committed by the respondent workman and out of 12 misconducts, on 11 misconducts the respondent workman had remained absent. Therefore, according to my opinion, the statement made by the learned advocate Mr. Rawal is right and some punishment is required to be imposed against the respondent workman without disturbing reinstatement with continuity of service without back wages for the interim period, on the ground that since 10 years the respondent workman is working with the petitioner Corporation and no interim stay has been granted by this Court against reinstatement with continuity of service granted by the Labour Court. Therefore, it is not necessary in the interest of justice to disturb reinstatement which has already been implemented by the petitioner Corporation. Therefore, the direction of reinstatement with continuity of service

without back wages for the interim period granted by the Labour Court has remained in operation and is not disturbed by this Court.

5. Considering the past record and misconducts on the part of the respondent workman, some punishment is required to be imposed against the respondent workman and therefore the respondent workman shall suffer punishment of stoppage of three years's increments without cumulative effect.

6. Accordingly, the present petition is partly allowed and the impugned award passed by the Labour Court, Rajkot in Reference (LCR) No.1486/88 dated 10-8-1990 is modified to the above effect. The direction of grant of reinstatement with continuity of service without back wages for the interim period is remained intact and is not disturbed by this Court and the respondent workman shall suffer punishment of three years' increment without cumulative effect. Rule is made absolute to the aforesaid extent, with no order as to costs.

Sd/-

(H.K. Rathod,J.)

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/JVSatwara/